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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/024,662	10/30/2001	Mario Capazario	3856/0J917	2682
7590 09/22/2006			EXAMINER	
DARBY & DARBY P.C. 805 Third Avenue New York, NY 10022			BROOKS, MATTHEW L	
			ART UNIT	PAPER NUMBER
			3629	

DATE MAILED: 09/22/2006

Please find below and/or attached an Office communication concerning this application or proceeding.

<b>Office Action Summary</b>	<b>Application No.</b>		<b>Applicant(s)</b>	
	10/024,662		CAPAZARIO ET AL.	
	<b>Examiner</b>		<b>Art Unit</b>	
	Matthew L. Brooks		3629	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

#### Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

#### Status

- 1) ☒ Responsive to communication(s) filed on 25 April 2002.
- 2a) ☐ This action is **FINAL**.                      2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

#### Disposition of Claims

- 4) ☒ Claim(s) 1-21 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1-21 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

#### Application Papers

- 9) ☒ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

#### Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).  
a) ☐ All    b) ☐ Some \* c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
  2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

#### Attachment(s)

- |  |   |
|--|---|
| 1) <input type="checkbox"/> Notice of References Cited (PTO-892)   | 4) <input type="checkbox"/> Interview Summary (PTO-413)<br>Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)                                   | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152)             |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)<br>Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____  |

***Request for Information Under 37 CFR § 1.105***

1. This is a request that applicants provide certain information identified below. If applicants have this information, then applicants are required, under the provisions of 37 CFR 1.56, to disclose the information to the Office. A copy of 37 CFR 1.56 is enclosed for the convenience of the applicants.
2. Applicants are not required or being asked to conduct a search for information beyond applicants own immediate files. If applicants do not have immediate knowledge of the information requested, then a statement that the information sought is unknown or not readily available to the applicants will be accepted by the office as a complete reply.
3. **Why the Request for Information is Reasonably Necessary** - Applicant states on pg 3, lines 1-5 of specification that the Applicant is fully aware of "Trials in Australia and United States that have shown that switching to the vertical shelving method does not reduce the amount of product that can be displayed or shelved." Also on page 4, lines 12-20 that "...in the United States, sales of the gallon size was particularly improved by moving it off the bottom shelf." Applicants are being asked for the information pertaining to all *pertinent* studies aware of in regards to vertical shelving.
4. **Information Requested of Applicants:** Are you aware of (1) dates of the aforementioned tests conducted, locations of stores, confidentiality agreements signed, and any publications and or photos associated with said studies and/or (2) publications on or about "vertical shelving"; on or before 30 October 2001? The information of the aforementioned tests must be pertinent to that of vertical shelving methods. If applicants' answer to this question is "Yes", applicants are required to identify the publication(s)/ requested information and the basis upon which applicants believe that these publications had this capability on or before 30 October 2001.

## DETAILED ACTION

### *Specification*

1. The disclosure is objected to because of the following informalities:

Specification, pg 3, line 6 "...the new arrange the shelves."

Appropriate correction is required.

### ***Claim Rejections - 35 USC § 112***

2. The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

3. Claims 2, 4, 11, and 12 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

4. With respect to claims 2 and 4 they fail to limit the claim because when a person is shelving only two products of different sizes as laid out in the independent claims the arrangement of smallest to largest in any direction would occur.

5. With respect to claims 11 and 12 the claims fail to limit the claims depended upon, in that the examiner is unsure of the difference between "next to" versus "immediately adjacent". If the Applicant can provide a difference and show support for in specification OR what is known in the art the rejection will be pulled.

***Claim Rejections - 35 USC § 103***

6. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

7. The factual inquiries set forth in *Graham v. John Deere Co.*, 383 U.S. 1, 148 USPQ 459 (1966), that are applied for establishing a background for determining obviousness under 35 U.S.C. 103(a) are summarized as follows:

1. Determining the scope and contents of the prior art.
2. Ascertaining the differences between the prior art and the claims at issue.
3. Resolving the level of ordinary skill in the pertinent art.
4. Considering objective evidence present in the application indicating obviousness or nonobviousness.

8. Claims 1-21 are rejected under 35 U.S.C. 103(a) as being unpatentable over Applicant's Admission in view of Official Notice.

9. With respect to the claims 1-5 and 11-12 (which is essentially vertical stocking of shelves by definition); Applicant states "Trials in Australia and United States that have shown that switching to the vertical shelving method does not reduce the amount of product that can be displayed or shelved." This is an admission by Applicant that the method of stacking a product in a store by **vertical method was known**, but thought to be non-useful because it may reduce amounts of product to be displayed. But that Applicant has discovered through tests that this is not true. However knowledge of this method would teach all of the elements claimed with the exception of claims 6-10 and 13-21,

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which all relate broadly speaking to (1) product type; (2) the actual number of products put on a shelf; and (3) the size of the product (ie; pint or ounce).

The examiner takes Official Notice that one of ordinary skill in the art of stocking shelves with knowledge of vertical shelving would use it on any product type, number of products as available of the item, and use it on any product size available from manufacturer. This application of shelving is old and well established in the business of commerce as a convenient way for a grocer to display said products. Whether or not the grocer thought it was not as effective or not is not relevant to patentability. It would have been obvious to one having ordinary skill in the art at the time of the invention to have included all product types and sizes in the vertical shelving method because the skilled artisan would have recognized that all the products the grocer had must be shelved in some manner. This business practice, of shelving all products and sizes available of a product type streamlines the sale thereof and consumers maximum available choices/options of a product, thus leading to maximum consumer satisfaction and is clearly applicable to the sale of any type of product. These advantages are well known to those skilled in the art.

### ***Conclusion***

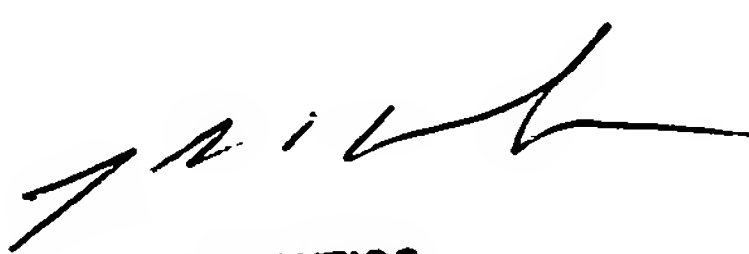
Any inquiry concerning this communication or earlier communications from the examiner should be directed to Matthew L. Brooks whose telephone number is (571) 272-8112. The examiner can normally be reached on Monday - Friday; 8 AM - 5 PM.

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If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, John Weiss can be reached on (571) 272-8112. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

MLB  
9/18/06



**JOHN G. WEISS**  
**SUPERVISORY PATENT EXAMINER**  
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